

WETLANDS COUNCIL

MINUTES

March 12, 2019

The Wetlands Council met on Tuesday, March 12, 2019 in Rooms 112, 113, 114
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Councilors: Matthew Bosiak, Lee Carbonneau, Jim Gove, Carol Henderson, Michael Klass, Deborah Lievens, Richard Mellor, Seth Prescott, Wendy Weisiger and Gretchen Young

Absentee: Councilor Russ St. Pierre

Also present were: Carolyn Guerdet, Council Clerk and Paula Scott, Appeal Clerk

The regular Wetlands Council meeting was called to order by Chairman Kimball 9:01 a.m. with introductions and a quorum present.

1. **Approval of Minutes**

- ***Councilor Gove made a motion to approve the February 12, 2019 meeting minutes, second by Councilor Henderson. Motion passed unanimously.***

2. **Public Input:** None

3. **Status of Appeals**
Paula Scott, Appeals Clerk

I. New Appeals

II. Decisions that need to be written/finalized and issued.

III. Hearings or PHCs Pending

Docket No. 17-10 WtC – Patricia A. Rose Appeal

Subject: 06/15/17 approval of Wetlands Permit #2015-03134 issued to Frank and Laurie Leichthammer

Hearing Officer: Not Assigned

Status: July 14, 2017 received Petition for Appeal. December 7, 2018 issued Pre-hearing Order scheduling hearing for April 9, 2019 at 9 a.m. January 7, 2019 received Motion to Compel. 1/17/19 issued letter granting Motion to Compel. February 22, 2019 received Appearance of Joshua Harrison for the Department. March 8, 2019 received Appellant's Witness and Exhibit List and a Motion to Continue and to Provide Information. 3/8/19 received State's Witness and Exhibit List.

Docket No. 18-13 WtC – William R. Davis Appeal

Subject: 9/5/18 Approval of Wetlands Permit #2018-01848 issued to Kimberly A. Wesson Revocable Trust

Hearing Officer: February 14, 2019 David Conley was appointed by AG.

Status: October 5, 2018 received Petition for Appeal. 10/9/18 issued Insufficient Appeal letter. November 8, 2018 received Supplemental to Petition for Appeal. 11/9/18 issued Receipt of Revised Appeal letter. Council to accept or dismiss Appeal at today's meeting. Discussion was held. Motion to Deny was passed on 12/11/18. 12/12/18 issued Ruling denying Acceptance of Appeal. January 11, 2019 received Motion for Reconsideration. Discussion was held. February 12, 2019 Council granted Motion for Reconsideration. 2/14/19 issued ruling Granting Motion for Reconsideration. 2/25/19 issued Notice of Pre-hearing Conference scheduled for March 18, 2019 at 9 a.m.

Docket No. 18-14 WtC – Kathleen McDonald Appeal

Subject: 9/17/18 Approval of Wetlands Permit #2017-00818 issued to Regina Gordon Revocable Trust

Hearing Officer: January 11, 2019 David Conley was appointed by AG.

Recused: Councilor Gove

Status: October 12, 2018 received Petition for Appeal. 10/15/18 issued Insufficient Appeal letter. 11/14/18 received Revised Petition for Appeal. November 19, 2018 issued Receipt of Revised Appeal. December 4, 2018 received Appearance of Patricia Paniciocco for permittee. Motion to Intervene and Motion requesting Summary Dismissed. January 4, 2019 received addition to Appeal. Council was made aware of a date discrepancy. Council accepted appeal and denied Motion for Summary Dismissal on January 8, 2019. 1/11/19 issued Ruling on Acceptance of Appeal and Motion to Summarily Dismiss. 1/11/19 received Objection to Letter Request by McDonald to Supplement the Appeal record. 1/17/19 issued Notice of Pre-hearing Conference scheduled for February 22nd at 9 a.m. 2/22/19 issued Pre-hearing Order scheduling Hearing for May 14, 2019 at 9 a.m.

Docket No. 18-15 WtC – Nancy Hall and Edward Benway, Trustee Appeal

Subject: 9/18/18 Administrative Order No. 18-015 WD

Hearing Officer: December 17, 2018 David Conley was appointed by AG

Status: October 18, 2018 received Petition for Appeal. 10/19/18 issued Receipt of Appeal Letter. Council to accept or dismiss Appeal at today's meeting. Appeal was accepted on December 11, 2018. 12/12/18 issued Appeal Accepted letter. January 4, 2019 issued Notice of Pre-hearing Conference scheduled for January 28, 2019 at 1 p.m. 1/18/19 received Motion to Continue Pre-hearing Conference. 1/23/19 received Appearance from Collis Adams and issued Letter granting Motion to Continue PHC rescheduling it for May 6, 2019 at 10 a.m.

Docket No. 19-02 WtC – Timothy & Jean Pineau and Jean Pineau, Trustee Appeal

Subject: 12/19/18 amendment to Administrative Order No. 18-020 WD

Hearing Officer: February 14, 2019 David Conley was appointed by AG.

Status: January 11, 2019 received Appearance from Regina Nadeau and Petition for Appeal. 1/15/19 issued receipt of Appeal letter. Council to accept or dismiss Appeal in today's meeting (2/12/19). Council voted to accept the Appeal on February 12, 2019. 2/19/19 issued Appeal accepted letter. 2/25/19 issued Notice of Pre-hearing Conference scheduled for March 18, 2019 at 10 a.m. 2/26/19 received Appearance from Atty. Reimers. 3/1/19 received Appearance from Atty. Aslin. 3/11/19 received Petition to Intervene.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

V. Misc.

Docket No. 18-03 WtC – New Castle Conservation Commission Appeal

Subject: 1/16/18 approval of Wetlands Permit No. 2017-00487 issued to Marion Clough

Hearing Officer: May 14, 2018 David Conley was appointed by AG.

Status: February 15, 2018 received Notice of Appeal. 1/04/19 received Appellant's Motion for Reconsideration of December 7, 2018 Order. 1/8/19 received Appearance of Christopher Aslin for the Department and received the Department's Witness and Exhibit List. 1/9/19 received Permittee's Witness and Exhibit List. 1/11/19 received Objection to Appellant's Motion for Reconsideration. 1/14/19 received Assented-to-Motion for Extension to Close Record for Filing Requests. 1/15/19 received Permittee's Motion to Exclude. 1/17/19 issued Notice of Pretrial Hearing on Applicant's Motion for Summary Judgment and Appellant's Objection and Cross Motion for Summary Judgment to be held on 1/22/19 at 11 a.m. in room 110. 1/17/19 received Appellant's Objection to Applicant's Motion to Exclude. 1/18/19 issued ruling denying Motion to Exclude. 1/23/19 issued rulings on Motions remanding Appeal to the Department for purposes of soliciting additional public comment. February 12, 2019 received Appellant's Motion for Reconsideration. 2/19/19 received Objection to Appellant's Motion for Reconsideration. 2/19/19 received DES' Objection to Appellant's Motion for Reconsideration. 2/22/19 issued letter ruling denying Motion for Reconsideration.

4. New Business

a. Organization Chart

RSA 15:A-4 require us to send an organizational chart into the Secretary of State. It is in the Financial SOP. This will be our list of members with Chair and Vice Chair Council Clerk, Appeals Clerk.

b. Wetlands Update – Mary Ann Tilton
Legislative Status

The HB 682 Fee Bill is their focus and the department is seeking an amendment with changes reducing proposed fees only if DES retains fee rulemaking authority starting in 2021. It addresses the three different programs in LRM. The amendment is 2 times instead of 3 times increase. Changes are for sustaining current staff, not increase in staff to meet current turnaround time. No changes in fees since 2007. We are much lower in fees than states around us. Discussion was held regarding fees, economy, and funding. Questions and concerns were addressed from the Council.

Wetlands Rule Making

Comments, hearing notes, and letters have been reviewed. April 7th is the deadline to Office of Legislative Services. The bureau will respond with a written response to the Council comments before adopting the rules. The Wetlands Council has fulfilled its requirement in previous meetings.

How HB1104 application review times changes have worked for the Bureau

Are you able to keep within the time changes as ordered? At this time, yes.

A break was taken at 9:54 to 10 a.m.

5. Old Business

An Council SOP has been drafted by Councilor St. Pierre. It was agreed this should include only items that are not in the Council rules. Felt it was a good orientation item – a great summary. Comments regarding the SOP were shared. It will be returned to at another time. An application form/checklist was also again noted.

Orientation materials received by Councilor Bosiak was discussed. It was encouraged to keep items updated as to what is helpful.

a. Audit Status

There was a review of the March 1, 2019 Response to Audit Comments of January 14, 2019 draft. Discussion was held. Council “oversight” of the Wetlands Bureau was discussed. Our hearing process is governed by RSA 541-A. Per RSA 91-A Hearing decision motions will now be included in the hearing minutes. May 10th is the current scheduled date for the LBA committee Wetlands audit meeting. The Council cover letter is to be sent to the auditors soon. Possible comments were discussed; they depend on review of the final draft audit report, not yet received by the Council. All the Council’s comments will be in the cover letter that is to be drafted at next month’s meeting.

- ***Councilor Lievens made a motion to affirm the March 21, 2019 response to the Audit Comments, second by Councilor Gove. Motion passed unanimously.***

b. The upcoming judicial training was discussed. .

6. Next Meeting –

The next meeting is April 9, 2019 at 8 a.m. with a hearing after at 9. Councilor Gove will not be at April hearing and Councilors Henderson & Carbonneau will be not at the May hearing.

7. Adjournment

- ***Councilor Gove made a motion to adjourn, second by Councilor Carbonneau. Motion passed unanimously.***

Meeting adjourned at 10:39 a.m.